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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

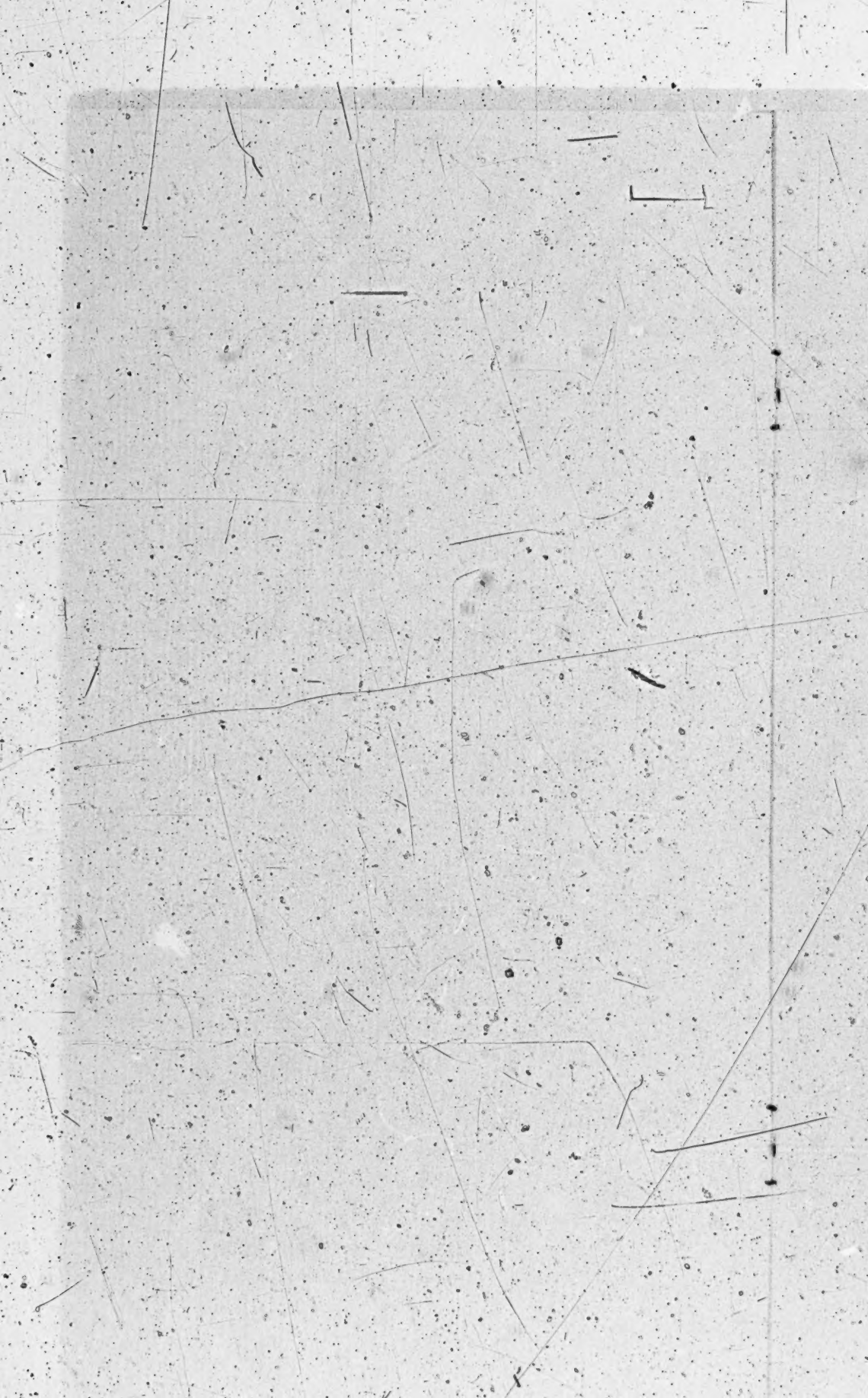
No. 433

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellants,
vs.
CHAMPLIN REFINING COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION TO AFFIRM

DAN MOODY,
HARRY O. GLASSER,
NATHAN SCARRITT,
Counsel for Appellee.



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Appellee, pursuant to Rule 12, Paragraph 3, of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed.

This is a direct appeal from the final judgment and decree entered on August 28, 1950, by a District Court of three judges specially constituted, pursuant to 28 U. S. C. 2284 and 2325, setting aside the orders of the Interstate Commerce Commission of June 13, 1949, in Docket No. 29,912, directing the Champlin Refining Company, appellee, to file reports with the said Interstate Commerce Commission, and to institute and maintain a uniform system of

accounts applicable to pipe lines; and to publish and file tariffs showing its rates and charges for Interstate transportation of refined petroleum products in Docket No. 29,912 (Sub-No. 1). Appeal was allowed on October 25, 1950, and appeal papers were served on counsel for the Champlin Refining Company, appellee, on October 26, 1950.

The constitutional question in this appeal was before the Supreme Court upon a former appeal between the same parties in No. 75, October Term, 1945, decided November 18, 1946, 329 U. S. 29-40, 91 Law Ed. 22-28.

It was there contended by Champlin—appellant, that the *act* as construed by the Commission upon the "valuation orders" in that appeal was in violation of the commerce power of Congress and violative of the due process clause of the Fifth Amendment because * * * such there complained of orders converts a private pipe line into a public utility and requires a private carrier to become a common carrier.

Mr. Justice Jackson, in disposing of such contention, said:

> "But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. This power has yet been invoked only to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier.
>
> "The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire is too premature and hypothetical to warrant consideration on this record. The appellant in its entire period of operation has never been

asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant. At present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegated to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions."

The orders here complained of are exactly the orders which Mr. Justice Jackson was considering in his observations with regard to Champlin's "premonitions" as to the possibility of the future entry thereof.

The adverse disposition of the Commission's orders, and resulting decision which the District Court has made is plainly correct.

We respectfully submit, therefore, that the appellants present no substantial question for the decision of this Court, and that the judgment and decree of the District Court should be affirmed.

DAN MOODY,
HARRY O. GLASSER,
NATHAN SCARRITT,
Counsel for Appellee.